

Docket No.: 202507US2

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

RE: Application Serial No.: 09/772,945
Applicants: Sugitaka OTEKI, et al.
Filing Date: January 31, 2001
For: IMAGE PROCESSOR AND IMAGE
PROCESSING METHOD
Group Art Unit: 2624
Examiner: POON, K.

SIR:

Attached hereto for filing are the following papers:

ELECTION OF SPECIES RESPONSE

Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Gregory J. Maier

Registration No. 25,599

Customer Number

22850

(703) 413-3000 (phone)
(703) 413-2220 (fax)

Surinder Sachar

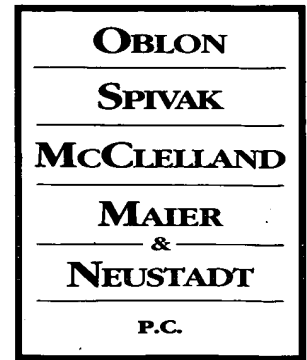
Registration No. 34,423



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ATTORNEYS AT LAW

GREGORY J. MAIER
(703) 413-3000
GMAIER@OBLON.COM

SURINDER SACHAR
(703) 413-3000
SSACHAR@OBLON.COM

DOCKET NO: 202507US2



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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
SUGITAKA OTEKI, ET AL. : EXAMINER: POON, K.
SERIAL NO: 09/772,945 :
FILED: JANUARY 31, 2001 : GROUP ART UNIT: 2624
FOR: IMAGE PROCESSOR AND IMAGE :
PROCESSING METHOD

ELECTION OF SPECIES RESPONSE

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species requirement dated September 24, 2004, the Applicants provisionally elect Species I corresponding to Figures 9 and 10 and identify Claims 1, 2, 6, 7, and 11 as readable on the provisionally elected species.

The Applicants respectfully traverse the election requirement.

First, the outstanding Official Action merely includes the conclusory statement that "the application contains claims directed to ... patentably distinct species ..." without stating any basis whatsoever in support of such a finding. This is in violation of MPEP § 816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given....

In the absence of any annunciated basis, it is respectfully submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

Application Serial No.: 09/772,945
Response to Election of Species Requirement
dated September 24, 2004

Second, MPEP § 803 states:


... If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area. Accordingly, the Applicants also respectfully traverse the outstanding Election requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

Therefore, it is respectfully requested that the requirement to elect a single species be withdrawn, and that a full examination on the merits of Claims 1-13 be conducted.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Gregory J. Maier
Attorney of Record
Registration No. 25,599

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Surinder Sachar
Registration No. 34,423

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